



CITY OF LODI COUNCIL COMMUNICATION

TM

AGENDA TITLE: Adopt Resolution Authorizing City Manager to Execute Agreements and Purchase Orders for Fixed-Network System as Follows and Appropriating Funds (\$472,000):

- A. Professional Services Agreement with Itron, Inc. (\$179,570)
- B. Software License Agreement with Itron, Inc. (\$45,000)
- C. Four Blade Servers from Dell Marketing, LLP (\$52,722)
- D. Hardware from General Pacific, Inc. (\$103,041)
- E. Radio Equipment (\$30,000)

MEETING DATE: June 1, 2011

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt resolution authorizing City Manager to execute agreements and purchase orders for a fixed-network system as follows and appropriating funds in the amount of \$472,000:

- A. Professional services agreement with Itron, Inc. (\$179,570)
- B. Software license agreement with Itron, Inc. (\$45,000)
- C. Four blade servers from Dell Marketing, LLP (\$52,722)
- D. Hardware from General Pacific, Inc. (\$103,041)
- E. Radio Equipment (\$30,000)

BACKGROUND INFORMATION: The City Council previously approved the standardization of solid-state electric meters for residential and small commercial customers (Resolution No. 2005-64) and water meters transmitters (Resolution No. 2010-125) with Itron, Inc. The City Council has also approved Dell as a sole source supplier for computer hardware.

The Electric Utility (EU) and Public Works (PW) departments have initiated automatic meter reading (AMR) projects with the installation of meters equipped with encoder receiver transmitters (ERT). To date, approximately 22,000 electric meters and 3,000 water meters are in service. By the end of FY 2011/12, all electric meters and approximately half of all residential water meters will be ERT-equipped. At this time, both systems are read by two vehicle-mounted radio receivers and two handheld radio receivers.

To fully receive the benefits of an AMR system, staff recommends installing a fixed-network system that would read the meters via a network of receivers placed around the community. The professional services agreement with Itron, Inc., includes the design of the fixed-network system, software engineering, software purchase and training. It is estimated 25 repeaters and five collectors will be installed along with a new data server.

The fixed-network will allow meters to be read as often as hourly, enabling EU to provide its customers with data on their usage patterns. EU will also be able to handle many routine service orders promptly via the fixed-network, such as reading meters for occupancy changes. The system will also provide outage information and assist in power restoration. The increased availability of load data will help in determining system loading and power purchasing. PW will gain similar meter reading benefits including

APPROVED: 
Konrad Bartlam, City Manager

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the ability to identify and notify customers of water leaks and unusual usage patterns. Personnel cost savings of \$75,000 per year can be realized by eliminating the need for fulltime meter readers.

The overall cost of implementing the fixed-network project is approximately \$400,000. This includes \$20,000 for EU, PW and Information Systems staff costs for installation of the radio equipment, installation of new servers and project management. The details of the project budget are presented in the table and sections below.

Item	Cost
A. Itron Professional Services	\$194,420
Discount	(40,200)
Travel Expenses	<u>25,350</u>
Subtotal	\$179,570
B. Itron Software License	\$45,000
C. Repeater/Collector Hardware from General Pacific, Inc.	\$103,041
D. Dell Blade Servers	\$52,722
E. Radio Equipment and Installation	\$30,000
F. Electric Utility/Public Works Staff Costs	\$20,000
Contingency 10%	\$41,667
Appropriation	\$472,000

A. Professional Services Agreement (PSA) with Itron

Itron's scope of work includes a propagation design study, installation of software, field engineering, software engineering, training and project management. The PSA also provides for training of EU and PW staff and includes a one-year maintenance warranty. The total contract value for professional services is \$179,570 and it includes a discount of \$40,200 and travel and expenses in the amount of \$25,350.

B. Itron Software License Agreement with Itron

This is the purchase agreement for the data collection network software and the billing gateway module that allows the system to provide outage information. The total cost of the software is \$45,000.

C. Repeater/Collector Hardware from General Pacific, Inc.

ChoiceConnect network hardware manufactured by Itron, Inc., consisting of 25 collectors and five repeaters, will be purchased from General Pacific, Inc., of Fairview, Oregon, at a cost of \$103,041. General Pacific is the exclusive distributor of Itron ChoiceConnect metering products. The infrastructure will be installed by EU staff at the locations determined in the propagation design study.

D. Four Blade Servers from Dell Solutions

As automated meter reads are performed, the data will be passed to servers hosted on the City's internal network and stored on mass storage devices. The stored data will be used by the City's billing system to generate customer bills. The four Dell servers being proposed here will integrate into the City's new blade server system with two servers assigned for production and two assigned for "failsafe" redundancy. The cost of this equipment and software is \$52,722.

Price quotes have been obtained directly from Dell Marketing, which is the sole vendor for this hardware. According to City policy, the City purchases computers directly from Dell Marketing via a competitively

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bid State contract. Purchasing via this type of State contract meets the requirements to obtain competitive quotes and ensures low pricing. Likewise, the Microsoft software and tape drive equipment reflect competitively pre-bid State contract pricing.

E. Radio Equipment and Installation

As automated meter reads are performed, the data received by the collectors and repeaters will be transmitted to the servers via radio. The equipment, installation materials, radio license, and installation labor will cost approximately \$30,000. The installation will be performed by EU staff.

F. EU/PW Staff Costs

The installation of the repeater/collector hardware will be performed by EU staff. Management of the contract for delivery of the fixed-network project will be provided by PW staff. The estimated cost of both of these services is \$20,000.

On September 1, 2010, City Council authorized the purchase of a Hewlett Packard mass storage device from Entisys, of Concord, for approximately \$35,000. This hardware and software is required to accommodate automated meter read data from a fixed-network. It was purchased in advance to take advantage of reduced pricing offered by Hewlett Packard.

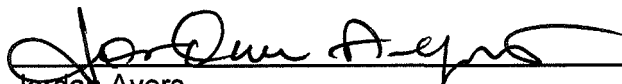
The total cost of the items requested to be approved by City Council (hardware, software, design, field installation, radio equipment and training) is approximately \$430,000. An appropriation of \$472,000 is requested and includes approximately 10 percent for contingency items. The total fixed-network project cost will be approximately \$507,000, including the Hewlett Packard mass storage device already purchased.

FISCAL IMPACT:

Personnel annual cost savings of \$75,000 to the City, additional potential savings to customers from early detection of unusual usage patterns that may indicate a problem.

FUNDING AVAILABLE:

Request Appropriation:
EUD Capital (161000) - \$231,000
Water Capital (181013) - \$241,000


Jordan Ayers
Deputy City Manager/Internal Services Director


Elizabeth A. Kirkley
Electric Utility Director


for F. Wally Sandelin
Public Works Director

FWS/pmf

AGREEMENT FOR PROFESSIONAL SERVICES

ARTICLE 1 PARTIES AND PURPOSE

Section 1.1 Parties

THIS AGREEMENT is entered into on _____, 2011, by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY"), and ITRON, INC. (hereinafter "CONSULTANT").

Section 1.2 Purpose

CITY selected the CONSULTANT to provide the services required in accordance with attached mutually agreed upon Statement of Work, Exhibit A, attached and incorporated by this reference.

CITY wishes to enter into an agreement with CONSULTANT for deployment of the ChoiceConnect 100 solution (hereinafter "Project") as set forth in the mutually agreed upon Statement of Work attached here as Exhibit A. CONSULTANT acknowledges that it is qualified to provide such services to CITY.

ARTICLE 2 SCOPE OF SERVICES

Section 2.1 Scope of Services

CONSULTANT, for the benefit and at the direction of CITY, shall perform the mutually agreed upon Statement of Work as set forth in Exhibit A.

Section 2.2 Time For Commencement and Completion of Work

CONSULTANT shall commence work pursuant to this Agreement, upon receipt of a written notice to proceed from CITY and shall perform all services diligently and complete work under this Agreement based on a mutually agreed upon timeline as designated in the Statement of Work.

CONSULTANT shall submit to CITY such reports, diagrams, drawings and other work products as may be designated in the Scope of Services.

CONSULTANT shall not be responsible for delays caused by the failure of CITY staff to provide required data or review documents within the appropriate time frames. The review time by CITY and any other agencies involved in the project shall not be counted against CONSULTANT's contract performance period. Also, any delays due to weather, vandalism, acts of God, etc., shall not be counted. CONSULTANT shall remain

in contact with reviewing agencies and make all efforts to review and return all comments.

Section 2.3 Meetings

CONSULTANT shall attend meetings as may be set forth in the Scope of Services.

Section 2.4 Staffing

CONSULTANT acknowledges that CITY has relied on CONSULTANT's capabilities and on the qualifications of CONSULTANT's principals and staff as identified in its proposal to CITY. The Scope of Services shall be performed by CONSULTANT, unless agreed to otherwise by CITY in writing. CITY shall be notified by CONSULTANT of any change of Project Manager.

CONSULTANT represents it is prepared to and can perform all services within the Statement of Work (Exhibit A) and is prepared to and can perform all services specified therein. CONSULTANT represents that it has, or will have at the time this Agreement is executed, all applicable licenses, permits, qualifications, insurance and approvals of whatsoever nature are legally required for CONSULTANT to practice its profession, and that CONSULTANT shall, at its own cost and expense, keep in effect during the life of this Agreement all such applicable licenses, permits, qualifications, insurance and approvals, and shall indemnify, defend and hold harmless CITY against any costs associated with such licenses, permits, qualifications, insurance and approvals which may be imposed against CITY under this Agreement.

Section 2.5 Subcontracts

Unless prior written approval of CITY is obtained, CONSULTANT shall not enter into any subcontract with any other party for purposes of providing any work or services covered by this Agreement.

Section 2.6 Term

The term of this Agreement commences on _____, 2011 and terminates upon the completion of the Scope of Services or on _____, 2011, whichever occurs first.

ARTICLE 3 COMPENSATION

Section 3.1 Compensation

CONSULTANT's compensation for all work under this Agreement shall conform to the fees and expense provisions of the Statement of Work (Exhibit A) and the Pricing Summary (Exhibit B).

CONSULTANT shall not undertake any work beyond the scope of this Agreement unless such additional work is approved in advance and in writing by CITY.

Section 3.2 Method of Payment

CONSULTANT shall submit invoices for completed work on a monthly basis, or as otherwise agreed, providing, without limitation, details as to amount of hours, individual performing said work, hourly rate, and indicating to what aspect of the Scope of Services said work is attributable. CONSULTANT's compensation for all work under this Agreement shall not exceed the amount of the Fee Proposal without the written approval of the parties.

Section 3.3 Costs

The proposed fees and expenses shall include all reimbursable costs required for the performance of the Statement of Work (Exhibit A). Payment of additional reimbursable costs considered to be over and above those inherent in the original Scope of Services shall be approved in advanced and in writing, by CITY.

Section 3.4 Auditing

CITY reserves the right to periodically audit all reimbursable charges made by CONSULTANT to CITY for services under this Agreement. Upon request, CONSULTANT agrees to furnish CITY, or a designated representative, with necessary information and assistance needed to conduct such an audit.

CONSULTANT agrees that CITY or its delegate will have the right to review, obtain and copy all records of reimbursable expenses pertaining to performance of this Agreement. CONSULTANT agrees to provide CITY or its delegate with any relevant information pertaining to reimbursable expenses requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. CONSULTANT further agrees to maintain such records for a period of three (3) years after final payment under this Agreement.

ARTICLE 4
MISCELLANEOUS | _____

Section 4.1 Nondiscrimination

In performing services under this Agreement, CONSULTANT shall not discriminate in the employment of its employees or in the engagement of any sub

consultant on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, age, or any other criteria prohibited by law.

Section 4.2 ADA Compliance

In performing services under this Agreement, CONSULTANT shall comply with the Americans with Disabilities Act (ADA) of 1990, and all amendments thereto, as well as all applicable regulations and guidelines issued pursuant to the ADA.

Section 4.3 Indemnity

a. General Indemnity.

CONSULTANT will defend CITY from any claim for (i) death of or bodily injury to a CITY employee or third party that is caused by CONSULTANT's gross negligence or intentional torts, or (ii) physical damage to tangible personal property owned by CITY or a third party that is caused by CONSULTANT's gross negligence or intentional torts and will pay costs and damages awarded against CITY (or settled) in any such action that are specifically attributable to CONSULTANT's gross negligence or intentional torts.

b. Right to Defend.

As a condition to CONSULTANT's indemnity obligations under this Agreement, CITY will provide CONSULTANT with prompt written notice of the claim, permit CONSULTANT to control the defense, settlement, adjustment or compromise of the claim and provide CONSULTANT with reasonable assistance in connection with such defense. CITY may employ counsel at its own expense to assist it with respect to any such claim.

c. Indemnity Disclaimer

This section constitutes CONSULTANT's sole and exclusive obligation with respect to third party claims brought against CITY.

Section 4.4 Waiver of Consequential Damages

Notwithstanding anything to the contrary in this agreement, in no event will either party be liable under any contract, negligence, strict liability or other legal or equitable theory for cover or for incidental, special, consequential (including loss or corruption of data or loss of revenue, savings or profit) or exemplary damage, even if the party has been advised of the possibility of such damages. CONSULTANT's pricing reflects this allocation of risks and limitation of liability.

Section 4.5 Cap on Liability

Notwithstanding anything to the contrary in this agreement, the aggregate liability of each party and its affiliates and its officers, directors, employees or other representatives, arising in any way in connection with this agreement – whether under

contract law, tort law, warranty or otherwise – shall not exceed (I), in the case of CONSULTANT, the total amount paid by CITY under this agreement and (II), in the case of CITY, the total amount paid and payable hereunder. CONSULTANT shall not be liable for any claim made the subject of a legal proceeding more than two (2) years after the cause of action asserted in such claim arose. CONSULTANT's pricing reflects this allocation of risks and limitation of liability.

Section 4.6 Responsibility of CITY Intentionally Deleted

Section 4.7 Insurance Requirements for CONSULTANT

CONSULTANT shall take out and maintain during the life of this Agreement, insurance coverage as set forth in Exhibit C attached hereto and incorporated by this reference.

Section 4.8 Successors and Assigns

CITY and CONSULTANT each bind themselves, their partners, successors, assigns, and legal representatives to this Agreement without the written consent of the others. Neither party shall assign or transfer any interest in this Agreement without the prior written consent of the other party, provided that either party may assign all or any part of this Agreement to its successor in a merger, consolidation or comparable transaction or to the purchaser of all or substantially all of its assets (or the assets associated with a particular line of business) so long as such successor or purchaser agrees in writing to comply with the terms and conditions of this Agreement and, provided further that CONSULTANT may assign this Agreement to an affiliate, including to a parent, subsidiary or sister entity

Section 4.9 Notices

Any notice required to be given by the terms of this Agreement shall be in writing signed by an authorized representative of the sender and shall be deemed to have been given when the same is personally served or upon receipt by express or overnight delivery, postage prepaid, or three (3) days from the time of mailing if sent by first class or certified mail, postage prepaid, addressed to the respective parties as follows:

To CITY:	City of Lodi
	221 West Pine Street
	P.O. Box 3006
	Lodi, CA 95241-1910

To CONSULTANT: General Counsel
Itron, Inc.
2111 N. Molter Rd.
Liberty Lake, WA 99019

Section 4.10 Cooperation of CITY

CITY shall cooperate fully and in a timely manner in providing relevant information it has at its disposal relevant to the Scope of Services.

Section 4.11 CONSULTANT is Not an Employee of CITY

CONSULTANT agrees that in undertaking the duties to be performed under this Agreement, it shall act as an independent contractor for and on behalf of CITY and not an employee of CITY. CITY shall not direct the work and means for accomplishment of the services and work to be performed hereunder. CITY, however, retains the right to require that work performed by CONSULTANT meet specific requirements set forth in Exhibit A.

Section 4.12 Termination

CITY may terminate this Agreement, with or without cause, by giving CONSULTANT at least thirty (30) days written notice. Where phases are anticipated within the Scope of Services, at which an intermediate decision is required concerning whether to proceed further, CITY may terminate at the conclusion of any such phase. Upon termination, CONSULTANT shall be entitled to payment for work performed up to the date of termination. Upon termination, CONSULTANT shall immediately suspend all work on the Project and deliver any documents or work in progress to CITY. However, CITY shall assume no liability for costs, expenses or lost profits resulting from services not completed or for contracts entered into by CONSULTANT with third parties in reliance upon this Agreement.

Section 4.13 Confidentiality

CONSULTANT agrees to maintain confidentiality of all work and work products produced under this Agreement, except to the extent otherwise required by law or permitted in writing by CITY. CITY agrees to maintain confidentiality of any documents owned by CONSULTANT and clearly marked by CONSULTANT as "Confidential" or "Proprietary", except to the extent otherwise required by law or permitted in writing by CONSULTANT. CONSULTANT acknowledges that CITY is subject to the California Public Records Act.

Section 4.14 Applicable Law, Jurisdiction, Severability, and Attorney's Fees

This Agreement shall be governed by the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be venued with the San Joaquin County Superior Court. If any part of this Agreement is found to conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in force and effect. In the event any dispute between the parties arises under or regarding this Agreement, the prevailing party in any litigation of the dispute shall be entitled to reasonable attorney's fees from the party who does not prevail as determined by the San Joaquin County Superior Court.

Section 4.15 City Business License Requirement

CONSULTANT acknowledges that Lodi Municipal Code Section 3.01.020 requires CONSULTANT to have a city business license and CONSULTANT agrees to secure such license and pay the appropriate fees prior to performing any work hereunder.

Section 4.16 Captions

The captions of the sections and subsections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question or interpretation or intent hereunder.

Section 4.17 Integration and Modification

This Agreement represents the entire understanding of CITY and CONSULTANT as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing, signed by both parties.

Section 4.18 Contract Terms Prevail

All exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and the attached exhibits, the terms of this Agreement shall prevail.

Section 4.19 Ownership of Documents

All documents, photographs, reports, analyses, audits, computer media, or other material documents or data, and working papers, whether or not in final form, which have been prepared under this Agreement and are identified as being a deliverable under this Agreement, shall be deemed the property of CITY. CITY grants to CONSULTANT a non-exclusive, perpetual license to use the deliverables solely for

CONSULTANT'S internal purposes. Upon CITY's request, CONSULTANT shall allow CITY to inspect all such documents during CONSULTANT's regular business hours. Upon termination or completion of services under this Agreement, all information collected, work product and documents shall be delivered by CONSULTANT to CITY within ten (10) calendar days.

CITY agrees to indemnify, defend and hold CONSULTANT harmless from any liability resulting from CITY's use of such documents for any purpose other than the purpose for which they were intended.

Section 4.19 Authority

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement.

IN WITNESS WHEREOF, CITY and CONSULTANT have executed this Agreement as of the date first above written.

CITY OF LODI, a municipal corporation

ATTEST:

By _____
RANDI JOHL
CITY CLERK

By _____
KONRADT BARTLAM
CITY MANAGER

APPROVED AS TO FORM:
D. STEPHEN SCHWABAUER, City Attorney

CONSULTANT: Itron, Inc.

By 
Janice D. Magdich
Deputy City Attorney

By: 

Its: _____
Steven M. Heimbrecht
Sr. Vice President & CFO
Itron, Inc.

Attachments:

Exhibit A – Statement of Work

Exhibit B – Pricing Summary

Exhibit C – Insurance Requirements



Statement of Work

ChoiceConnect 100 Deployment

City of Lodi

Created By: Willie Burgess

Date: May 10, 2011

Version: 1.5

1

Introduction

This Statement of Work (SOW) defines the services (“Services”) to be performed by Itron Inc., a Washington, USA corporation, (“Itron”) at City of Lodi (“Lodi”) for the deployment of the ChoiceConnect 100 solution (the “Project”). The Services shall be governed by the terms and conditions of the Agreement executed by and between Lodi and Itron on _____, 2010.

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Project Scope & Schedule

Scope of Work

This section describes the activities and deliverables (together the “Services”) that Itron will provide to the Project.

Base Implementation

Phase	Component	Events/Activities	Hours
Define	Network Design Services	<ul style="list-style-type: none">– Procure RF Clutter data and perform initial Network Design	20
Deliver	Project Management for FN2.0 Implementation	<ul style="list-style-type: none">– Preparation of project Plans, scope, change orders– Project Manager Conduct project kick-off meeting– Track, manage and communicate project financial status to project stakeholders during the project phases.– Project Manager schedule weekly project status meetings	56

Design	System Implementation	<ul style="list-style-type: none"> - Project Manager oversight of system implementation activities. - Consult on server sizing, configuration and appropriation - CIS/Billing System integration requirements gathering - System administration and security requirements gathering - Network Software Implementation planning - Creation of Technical Architecture and Data Flow diagrams 	120
Build	Installation and Functional Testing	<ul style="list-style-type: none"> - Project Manager oversight of software installation activities. - Network Software installation and configuration - System functional testing - Integration development assistance - End to end system testing assistance 	114
Build	Network Software Configuration	<ul style="list-style-type: none"> - Assist with creation of XML documents to configure entities in Network Software 	30
Deploy/ Operate	ChoiceConnect - To Be Performed by Lodi	<ul style="list-style-type: none"> - Network Installation - Meter Installation - Performance Monitoring - Field Investigations - perform meter 	TBD
Deploy/ Operate	Performance Monitoring	<ul style="list-style-type: none"> - Back Office Project Manager performance monitoring of Lodi installations. - Back Office Project Manager to work with customer on performance issues - Back Office Project Manager engages Field Engineer for mitigation activities 	144

Deploy / Operate	System Mitigation / Field Engineering Support	<ul style="list-style-type: none"> – Back Office Project Manager provide Project Oversight for mitigation to be performed after System Deployment – Weekly review and reporting of project progress – Field Engineering on-site support during mitigation – Audit CCU Installations (as performed by Lodi) to ensure proper connectivity and installation 	360
Transfer	Network Software Preparation and Delivery	<ul style="list-style-type: none"> – Final Product Configuration Design – System Administration – End User 	60
Transfer	Transition to Customer Support	<ul style="list-style-type: none"> – Lessons Learned – Document preparation for transfer to Itron Support – Transition to support – Project Close 	28
Totals			932

Project Schedule

The Project is estimated to take **12** months from the Start Date. Itron Consulting Services are currently able to start this Project four weeks from signature.

General Project Assumptions

1.	The Fixed Network software and hardware for the production system will be configured at the Lodi's data center.
2.	Lodi will provide appropriate floor space and electrical service for the computer equipment.
3.	Lodi will be responsible for providing all required 3 rd party software and licenses. Including but not limited to, Microsoft SQL, and the operating systems.
4.	Itron will be granted remote access for the duration of the project to the Fixed Network system. This will include VPN (or equivalent) access to the system as agreed upon between Lodi and Itron.

5.	Lodi will provide Itron a local administrator account on all Network Software servers for remote Itron access. The Microsoft SQL system administrator (sa) password will be required for installation.
6.	Itron is only providing Network Software installation, configuration and support for a production environment. Support for additional environments will be provided by Itron for an additional charge.
7.	Lodi will be able to provide a project resource capable of creating XML documents.
8.	Lodi will have installed all necessary hardware and pre-requisite software prior to Network Software installation.
9.	All necessary server permissions and system access will be established by Lodi prior to Network Software installation.
10.	Billing interface to existing MVRs system will be provide via Billing Gateway functionality.
11.	Network Software testing and training activities will occur upon completion of at least one collector installation and population of reading data in the Fixed Network database.
12.	Integrations to Network Software will be accomplished using Itron standard WSDLs.
13.	Itron will support Lodi in the development and testing of the Network Software configuration files.
14.	Itron will support Lodi through the deploy of the ChoiceConnect 100 solution for 12 months providing Project Management and Field Engineering services.
15.	Itron will provide Network Design Services as described in Section 1 "Project Scope and Services". If provided procurement of RF Clutter data will also be required.
16.	Itron will not provide any additional Professional Services without prior agreement. These services will be adopted through the Itron Change Control Process.

3

Service Fees & Related Details

Fees, Expenses & Payment

Fees are estimated to be on a fixed fee basis.

Description	Hours	Hourly Rate	Cost
Project Management	424	\$225.00	\$95,400.00
Field Engineering	240	\$190.00	\$45,600.00
Software Engineering	248	\$190.00	\$47,120.00
Network Design Services	20	\$190.00	\$3,800.00
RF Clutter Data (Required)			\$2,500.00
Level I Total	932		\$194,420.00
Estimated Travel Expenses (includes Per Diem and Airfare) Billed as Actual	54 per diems 14 airfares	\$275 per diems \$750 airfares	\$25,350.00
Totals Services	932		\$219,770.00

These fees are based upon our recommended engagement approach, staffing levels, scope and timelines as outlined in the SOW. Modifications to any of these factors will result in changes to the proposed fees. Any changes that affect scope, resources, timeline or cost will follow the Change Control Process described in this document.

Itron will invoice Lodi in accordance with the Agreement. If at any point, there is reason to believe that the estimated amount will be exceeded; Itron will promptly notify Lodi as to the changes in the estimate and issue a Change Order, which will be approved by Lodi. Lodi shall pay all taxes, if any, due for Services provided by Itron to Lodi under this SOW.

Actual, reasonable travel and related expenses will be billed directly to Lodi are not included in the cost estimates. Itron will use reasonable efforts to take advantage of advance purchase discounts and corporate travel arrangements.

Payment terms are net 30. If Lodi issues a purchase order for any specific Services, the terms of this SOW shall govern Itron's performance of such Services and will supersede any terms contained in Lodi's purchase orders.

Additionally, optional Field Engineering Services are available at \$190/hour plus travel time, per diem of \$275 and actual air fare expenses.

Billing Information

To ensure that Itron has all the correct billing information, please verify the following Lodi billing information:

Billing	Lodi
Billing Contact Name	
Billing Contact Phone # (s)	
Billing Contact Email Address	
Billing Address	
Special Billing Requirements?	
PO #	

Change Control Process

A Project change order (Change Order) will be the vehicle for communicating changes. The Change Order must describe the change requested, the rationale for the change, the estimated price and the effect the change will have on the Project. All Change Orders must be approved by Lodi.

4

Agreement

Lodi agrees to these terms and authorizes commencement of the Project described in this SOW.

City of Lodi

Authorized Signature

Printed Name

Title

Date

Authorized Signature

Printed Name

Steven M. Helmbrecht
Sr. Vice President & CFO
Itron, Inc.

Title

Date

5/13/11

Approved as to form


City Attorney



Electric / Gas / Water
 Information collection, analysis and application
 2111 N. Molter Rd.
 Liberty Lake, WA 99019
 fax: 866-787-6910
www.itron.com

Pricing Summary for
City of Lodi

May 11, 2011
 BMR# 9265-11 Ver3 May

Item	Part Number	Description	Qty	Unit Price	Extended Price	Notes
Software						
1	FN SW V4.x	Data Collection Network Software, Used for Water & Electric		\$15,000.00	\$15,000.00	(1)
	FN CCU V4.x Kit	For up to 75,000 Endpoints				
	NS1C	(Includes Billing Gateway Module)				
	OAFNC	Outage Activation		\$30,000.00	\$30,000.00	(1)
Software Total					\$45,000.00	
Professional Services						
2	Services	Fixed Network Professional Services			\$147,300.00	(2-4)
		Includes Propagation Study, Project Management & Field Engineering				
3	Services	Fixed Network Head End Installation and Training			\$47,120.00	(2-4)
		Water and Electric Level 1 Software Only				
Professional Services Total					\$194,420.00	
Subtotal					\$239,420.00	
System Discount					(\$40,200.00)	(6)
ChoiceConnect 100 Fixed Network System Total					\$199,220.00	
Estimated Travel & Expenses					\$25,350.00	(5)
Annual Maintenance						
4	Maintenance	Data Collection Network Software, Used for Water & Electric		\$3,000.00	\$3,000.00	
		For up to 75,000 Endpoints				
		(Includes Billing Gateway Module)				

Notes and Assumptions

- (1) Software pricing is dependent upon number of meters under the network. Monthly billing and daily read functionality are included.
- (2) Itron's professional services estimates are based on a 12 month project duration. Hours are an estimate and will be billed based on actual. Professional Services pricing is based on Itron's current understanding of the project scope and is subject to change pending a detailed technical analysis, final system design, and a mutually agreed-upon Scope of Work document. Itron is responsible for audit and supervising initial installation of CCUs. Itron assumes that utility infrastructure (light poles and arms) will be used for mounting CCUs and repeaters.
- (3) Itron can provide pricing for site acquisition, lease negotiation, legal fees, environmental studies, site engineering, structural studies, and permits for any non-utility sites. The utility shall be responsible for any ongoing lease fees for 3rd party sites.
- (4) Itron assumes that utility is responsible for installing CCUs, endpoints, including any work management system to track such installations.
- (5) Travel expenses have been estimated above but will be billed based on actual.
- (6) System discount is provided as consideration for the purchase of the fixed network solution for electric and water. Discount requires purchase of bundled solution as quoted above.
- (7) Hardware will be provided by General Pacific. Software, Professional Services and Hosting Services will be provided by Itron. General Pacific is Itron's sole electricity distributor for Northern California.
- (8) Freight, taxes, duties, and tariffs are not included. Prices are in US dollars.
- (9) Prices are valid for 90 days.

Confidential



Electric / Gas / Water

Information collection, analysis and application

2111 N. Molter Rd
Liberty Lake, WA 99019
fax: 866-787-6910
www.itron.com

EXHIBIT B

City of Lodi

May 71, 2011
Based on BMR# 9265-11 Ver3 May

Item	Part Number	Description	Qty	Unit Price	Extended Price	Notes
Professional Services						
2	Services	Fixed Network Professional Services			\$147,300.00	(1-3)
		Includes Propagation Study, Project Management & Field Engineering				
3	Services	Fixed Network Head End Installation and Training			\$47,120.00	(1-3)
		Water and Electric Level 1 Software Only				
		Professional Services Total			\$194,420.00	
		System Discount			(\$40,200.00)	(5)
		Total			\$154,220.00	
		Estimated Travel & Expenses			\$25,350.00	(4)

Notes and Assumptions

- (1) Itron's professional services estimates are based on a 12 month project duration. Hours are an estimate and will be billed based on actual. Professional Services pricing is based on Itron's current understanding of the project scope and is subject to change pending a detailed technical analysis, final system design, and a mutually agreed-upon Scope of Work document. Itron is responsible for audit and supervising initial installation of CCU's. Itron assumes that Customer's infrastructure (light poles and arms) will be used for mounting CCU's and repeaters.
- (2) Itron can provide pricing for site acquisition, lease negotiation, legal fees, environmental studies, site engineering, structural studies, and permits for any non-utility sites. The utility shall be responsible for any ongoing lease fees for 3rd party sites.
- (3) Itron assumes that Customer is responsible for installing CCUs, endpoints, including any work management system to track such installations.
- (4) Travel expenses have been estimated above but will be billed based on actual.
- (5) System discount is provided as consideration for the purchase of the fixed network solution for electric and water. Discount requires purchase of bundled solution as quoted above.
- (6) Hardware will be provided by General Pacific. Software, Professional Services and Hosting Services will be provided by Itron. General Pacific is Itron's sole electricity distributor for Northern California.



EXHIBIT C

Insurance Requirements for Consultant The Consultant shall take out and maintain during the life of this contract, insurance coverage as listed below. These insurance policies shall protect the Consultant and any subcontractor performing work covered by this contract from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from Consultant's operations under this contract, whether such operations be by Consultant or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amount of such insurance shall be as follows:

1. **COMPREHENSIVE GENERAL LIABILITY**

\$2,000,000 Ea. Occurrence
\$4,000,000 Aggregate

2. **COMPREHENSIVE AUTOMOBILE LIABILITY**

Proof of coverage with limits not less than \$1,000,000 combined single limit and naming the CITY, by endorsement, as an additional insured.

3. **PROFESSIONAL ERRORS AND OMISSIONS**

Not less than \$50,000 per Claim./\$1,000,000 Aggregate. Certificate of Insurance only required.

NOTE: Contractor agrees and stipulates that any insurance coverage provided to the City of Lodi shall provide for a claims period following termination of coverage which is at least consistent with the claims period or statutes of limitations found in the California Tort Claims Act (California Government Code Section 810 et seq.).

A copy of the certificate of insurance with the following endorsements shall be furnished to the City:

(a) **Additional Insured Endorsement**

Such insurance as is afforded by this policy shall also apply to the City of Lodi, its elected and appointed Boards, Commissions, Officers, Agents, Employees, and Volunteers as additional insureds.

(This endorsement shall be on a form furnished to the City and shall be included with Contractor's certificates.)

(b) **Primary Insurance Endorsement**

Such insurance as is afforded by the endorsement for the Additional Insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the insurance afforded by this endorsement.

(c) **Severability of Interest Clause**

The term "insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limit of the company's liability.

(d) **Notice of Cancellation or Change in Coverage Endorsement**

This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation, 10 days notice of cancellation in the event of non-payment of premium, or reduction in coverage to the Risk Manager, City of Lodi, 221 W. Pine St., Lodi, CA 95240.

Compensation Insurance The Contractor shall take out and maintain during the life of this contract, Worker's Compensation Insurance for all of Contractor's employees employed at the site of the project and, if any work is sublet, Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in hazardous work under this contract at the site of the project is not protected under the Worker's Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide insurance for the protection of said employees. This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation, 10 days notice of cancellation in the event of non-payment of premium, or reduction in coverage to the Risk Manager, City of Lodi, 221 W. Pine St., Lodi, CA 95240.

ITRON SOFTWARE LICENSE AGREEMENT

This Itron Sales Agreement (the "**Agreement**") is entered into as of the last date of execution on the signature page hereto (the "**Effective Date**") by and between Itron, Inc. ("**Itron**") and the City of Lodi ("**Customer**"). Itron and Customer may each be referred to as a "**Party**" and together as the "**Parties**."

The Parties agree as follows:

1. **Software Terms**

a. *Definitions.*

"Delivery" with respect to Software, means that Itron has either made the Software available to Customer via electronic means or has provided the Software to a carrier on physical media for delivery to Customer.

"Documentation" means all printed or electronic materials published or otherwise that are provided to Customer and that describe or relate to the functional, operational or performance capabilities of the Software.

"Meter" means a device used for measuring the amount of electricity, gas or water used at a residence or business or by a machine. If a single Meter serves more than one residence, business or machine, it will count as the number of residences, businesses or machines being served (e.g., where a single Meter serves 10 residences, it will count as 10 Meters).

"Object Code" means the binary, machine-readable version of the Software

"Production Environment" means a single instance of the Software used in an environment other than a Test Environment.

"Software" means software identified on Attachment A that is owned by Itron and any modifications, corrections, improvements or enhancements thereto provided by Itron.

"Source Code" means human-readable computer programming code, associated procedural code and related documentation

"Specifications" means the applicable published Itron functional specifications for an item of Software.

"Test Environment" means a single instance of the Software used solely for test purposes. Such installation can only be used to verify the correct installation, operation, and integration of the Software and/or components.

"Third Party Software" means software that is not owned by Itron but is identified on Attachment A as being provided by Itron.

"Use" means the ability to run, execute, display and, subject to the restrictions described below, duplicate and distribute internally

"Warranty Period," means the Warranty Period shall be ninety days from the date of Delivery.

b. *License Grant.*

Subject to the terms of this Agreement and for the license fee set forth on Attachment A, Itron grants to Customer a nonexclusive, nontransferable, perpetual Object Code license to Use the Software and Documentation for its internal business purposes only in connection with the number of Meters set forth in Attachment A.

c. *Restrictions.*

As a condition to the foregoing license grant, Customer shall not (i) violate any restriction set forth on Attachment A, (ii) modify or create any derivative work from the Software, (iii) include the Software in any other software, (iv) use the Software to provide processing services to third parties or on a service bureau basis, (v) reverse assemble, decompile, reverse engineer or otherwise attempt to derive Source Code (of the underlying ideas, algorithms, structure or organization) from Software, or (vi) use the Software to process business information concerning customers derived through merger, asset acquisition or other entity combination.

Except as expressly permitted in this Agreement, (i) the Software may not be installed on a computer that is not part of the Customer's computer network, (ii) Customer may not copy the Software other than to make one machine readable copy for disaster recovery or archival purposes, and (iii) installation of the Software shall be limited to one Production Environment and one Test Environment. Customer may only make copies of Documentation as reasonably necessary for the use contemplated herein. The Software and Documentation shall be considered the confidential information of Itron and, as such, shall be subject to the confidentiality provisions of this Agreement.

d. *Invoicing.*

Itron will invoice Customer for the Software and any Third Party Software upon Delivery

e. *Limited Software Warranty*

i. *Warranty and Remedy.*

For the Warranty Period, Itron warrants to Customer that the Software will perform substantially in accordance with the Specifications. Itron does not warrant that the Software will operate uninterrupted or error-free. Itron's sole obligation and Customer's exclusive remedy in connection with the breach of a warranty provided under this Section shall be for Itron to repair or replace the non-conforming Software. If Itron, in its sole discretion, is unable to repair or replace non-conforming Software, Itron will refund to Customer the amount paid for such Software. Software that is repaired or replaced pursuant to this Section will be warranted for the remainder of the original warranty period or 30 days, whichever is longer. Customer's license to Software for which it has received a refund hereunder shall terminate upon its receipt of a refund.

ii. *Exclusions*

The warranty provided in this Section shall not apply to the extent that non-compliance relates to or is the result of (i) use of the Software in combination with software, equipment or communications networks not provided by Itron, (ii) a change to the Software's operating environment not made or authorized by Itron, (iii) Customer's failure to install any correction or enhancement provided by Itron, (iv) viruses introduced through no fault of Itron, (v) any use of the Software not authorized by this Agreement. The warranty

provided in this Section is valid only if Customer has complied with the terms of this Agreement (including paying the applicable Software license fees) and shall be void to the extent of any modification to the Software not authorized by Itron.

f. Third Party Software and Documentation.

Itron shall provide the Third Party Software, if any, identified on Attachment A and any related documentation. Any Third Party Software and related documentation provided by Itron in connection with this Agreement shall be subject to a separate license agreement between the Customer and the third party software provider and will be subject to separate third party warranties, if any. Customer agrees that it will be bound by and will abide by all such third party software licensing arrangements. Customer is solely responsible for acquiring any software that is required to use the Software or Third Party Software.

g. Audit.

Customer will maintain accurate and detailed records as necessary to verify compliance with this Agreement. Itron may audit these records to verify compliance at any time during Customer's regular business hours after giving notice 5 business days in advance of the audit. Except as described below, Itron will bear all costs and expenses associated with the exercise of its audit rights. Any errors in payments identified will be corrected by Customer by appropriate adjustment. In the event of an underpayment of more than 5 percent, Customer will reimburse Itron the amount of the underpayment, reasonable costs associated with the audit, and interest on the overdue amount at the maximum allowable interest rate from the date the obligation accrued.

h. Obligations Upon Termination for Cause.

Upon a termination by Itron for cause, Customer's license to any Software and right to receive maintenance and support for such Software shall immediately terminate and Customer shall (i) delete any Software from all of its computers, (ii) immediately deliver to Itron or destroy all copies of such Software and any related Documentation and (iii) certify in writing to Itron within 10 days of any such termination that, to the best of Customer's knowledge, Customer has complied with this Section.

i. Other Provisions.

Customer shall not, directly or indirectly, export or transmit the Software to any country to which such export or transmission is prohibited by any applicable regulation or statute. The Parties agree that Software provided under this Agreement shall be deemed to be "goods" within the meaning of Article 2 of the Uniform Commercial Code, except when such a practice would cause an unreasonable result. The Parties agree that the Uniform Computer Information Transaction Act (or a version thereof or substantially similar law) shall not govern this Agreement.

2. Payment Terms and Taxes.

For invoices not paid within 45 days of the invoice date, in addition to other remedies to which Itron may be entitled, Itron may charge Customer a late fee of one percent per month applied against overdue amounts. Customer shall also be responsible for collection costs associated with late payment, if any, including reasonable attorneys' fees. No endorsement or statement on any check or payment or in any letter accompanying a check or payment or elsewhere shall be construed as an accord or satisfaction. Unless otherwise indicated on Attachment A, Customer shall pay all amounts owing under this Agreement in U.S. Dollars. The prices set forth on Attachment A do not include taxes. Customer will be responsible for and pay all applicable sales, use, excise, value-added and other taxes associated with the provision of products or services by Itron, excluding taxes on Itron's income generally. If Customer is a tax exempt entity, or pays taxes directly to the state, Customer will provide Itron with a copy of its Tax Exemption Certificate or Direct Pay Permit, as applicable, upon execution of this Agreement.

3. Changes.

Changes to the products or services ordered by Customer pursuant to this Agreement, including the purchase of additional quantities or entirely new products or services, may be made at Itron's then-current pricing by purchase order or Change Order (in a form acceptable to Itron), provided that any such purchase order must first be accepted by Itron.

4. Confidentiality.

With respect to any information supplied in connection with this Agreement and designated by either Party as confidential, or which the recipient should reasonably believe to be confidential based on its subject matter or the circumstances, the recipient agrees to protect the confidential information in a reasonable and appropriate manner, and to use and reproduce the confidential information only as necessary to realize the benefits of or perform its obligations under this Agreement and for no other purpose. The obligations in this Section will not apply to information that is: (i) publicly known; (ii) already known to the recipient; (iii) lawfully disclosed by a third party; (iv) independently developed; or (v) disclosed pursuant to a legal requirement or order. The recipient may disclose the confidential information on a need-to-know basis to its contractor's, agents and affiliates who agree to confidentiality and non-use terms that are substantially similar to these terms.

5. IP Ownership.

Between Itron and Customer, all patents, copyrights, mask works, trade secrets, trademarks and other proprietary rights in or related to any product, software or deliverable provided by Itron pursuant to this Agreement are and will remain the exclusive property of Itron. Any modification or improvement to an Itron product or deliverable that is based on Customer's feedback shall be the exclusive property of Itron. Customer will not take any action that jeopardizes Itron's proprietary rights nor will it acquire any right in any such product, software or deliverable or Itron's confidential information other than rights granted in this Agreement.

6. Indemnification

a. General Indemnity.

Itron will defend Customer from any claim for (i) death of or bodily injury to a Customer employee or third party that is caused by Itron's gross negligence or intentional torts, or (ii) physical damage to tangible personal property owned by Customer or a third party that is caused by Itron's gross negligence or intentional torts and will pay costs and damages awarded against Customer (or settled) in any such action that are specifically attributable to Itron's gross negligence or intentional torts.

b. Infringement Indemnify.

Itron will, at its own expense, defend any claim or action brought against Customer by an unaffiliated third party to the extent that the action is based upon a claim that any product manufactured, software licensed or service provided by Itron hereunder directly infringes any U.S. patent (issued as of the Effective Date) or any copyright or trademark and Itron will pay those costs and damages awarded against Customer (or settled) in any such action that are specifically attributable to such claim. The foregoing indemnity does not apply to products not manufactured by Itron or software licensed by third parties.

c. Conditions to Infringement Indemnity.

Itron's infringement indemnity obligations under this Section are conditioned on Customer's agreement that if the applicable product or service becomes, or in Itron's opinion is likely to become, the subject of such a claim, Customer will permit Itron, at Itron's option and expense, either to procure the right for Customer to continue using the affected product or service or to replace or modify the same so that it becomes non-infringing. Such replacements or modifications will be functionally equivalent to the replaced product or service. If the foregoing alternatives are not available on terms that are reasonable in Itron's judgment, Itron shall have the right to require Customer to cease using the affected product or service in which case Itron will refund to Customer the depreciated value of the affected product or service.

d. Exclusions.

Itron shall have no obligation under this Agreement to the extent any claim of infringement or misappropriation results from: (i) use of a product or service, other than as permitted under this Agreement or as intended by Itron, if the infringement would not have occurred but for such use; (ii) use of any product or service in combination with any other product, equipment, software or data, if the infringement would not have occurred but for such combination; (iii) any use of any release of a software or any firmware other than the most current release made available to Customer, (iv) any claim based on Customer's use of a product after Itron has informed Customer of modifications or changes to the product required to avoid such claims and offered to implement those modification or changes, if such claim would have been avoided or mitigated by the implementation of Itron's suggestions, (v) any modification to a product made by a person other than Itron or an authorized representative of Itron, or (vi) compliance by Itron with specifications or instructions supplied by Customer. Itron shall not be liable hereunder for enhanced or punitive damages that could have been avoided or reduced by actions within the control of Customer.

e. Right to Defend.

As a condition to Itron's indemnity obligations under this Agreement, Customer will provide Itron with prompt written notice of the claim, permit Itron to control the defense, settlement, adjustment or compromise of the claim and provide Itron with reasonable assistance in connection with such defense. Customer may employ counsel at its own expense to assist it with respect to any such claim.

f. Indemnity Disclaimer

THIS SECTION CONSTITUTES ITRON'S SOLE AND EXCLUSIVE OBLIGATION WITH RESPECT TO THIRD PARTY CLAIMS BROUGHT AGAINST CUSTOMER.

7. Warranty Disclaimer.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, ITRON DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, CONDITIONS OR REPRESENTATIONS INCLUDING, WITHOUT LIMITATION, (I) IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, (II) WARRANTIES OF TITLE AND AGAINST INFRINGEMENT AND (III) WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. TO THE EXTENT ANY IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD.

8. WAIVER OF CONSEQUENTIAL DAMAGES.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR COVER OR FOR INCIDENTAL, SPECIAL, CONSEQUENTIAL (INCLUDING LOSS OR CORRUPTION OF DATA OR LOSS OF REVENUE, SAVINGS OR PROFITS) OR EXEMPLARY DAMAGES, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ITRON'S PRICING REFLECTS THIS ALLOCATION OF RISKS AND LIMITATION OF LIABILITY.

9. CAP ON LIABILITY.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, EXCEPT FOR ITRON'S OBLIGATIONS UNDER SECTION 6. B. INFRINGEMENT INDEMNITY AND EXCEPT FOR A BREACH BY CUSTOMER OF (I) ANY INTELLECTUAL PROPERTY RIGHT OF ITRON OR (II) ANY LICENSE GRANTED BY ITRON HEREUNDER, THE AGGREGATE LIABILITY OF EACH PARTY AND ITS AFFILIATES AND ITS AND THEIR OFFICERS, DIRECTORS, EMPLOYEES OR OTHER REPRESENTATIVES, ARISING IN ANY WAY IN CONNECTION WITH THIS AGREEMENT—WHETHER UNDER CONTRACT LAW, TORT LAW, WARRANTY OR OTHERWISE—SHALL NOT EXCEED (I), IN THE CASE OF ITRON, THE TOTAL AMOUNT PAID BY CUSTOMER UNDER THIS AGREEMENT AND (II), IN THE CASE OF CUSTOMER, THE TOTAL AMOUNT PAID AND PAYABLE HEREUNDER. ITRON SHALL NOT BE LIABLE FOR ANY CLAIM MADE THE SUBJECT OF A LEGAL PROCEEDING MORE THAN TWO (2) YEARS AFTER THE CAUSE OF ACTION ASSERTED IN SUCH CLAIM AROSE. ITRON'S PRICING REFLECTS THIS ALLOCATION OF RISKS AND LIMITATION OF LIABILITY.

10. Term and Termination

a. Term of Agreement.

Unless terminated earlier as provided herein, the term of this Agreement shall be from the Effective Date through December 31st of the year in which any products or services to be provided hereunder have been provided. The term of this Agreement shall thereafter automatically renew for successive one year periods unless either Party provides the other with written notice of its intent not to renew at least 90 days prior to such termination; provided, however, that Customer shall be obligated to purchase and Itron shall be obligated

to provide any product or service that is the subject of an unfulfilled order accepted by Itron prior to the time of any such termination. Notwithstanding the foregoing, the term of any license provided by Itron hereunder shall be as set forth in the provision granting such license

b. Termination for Cause

Either Party may terminate this Agreement by providing the other Party with written notice if the other Party (i) becomes insolvent, executes a general assignment for the benefit of creditors or becomes subject to bankruptcy or receivership proceedings; (ii) breaches its obligations related to the other Party's confidential information; or (iii) commits a material breach of this Agreement that remains uncured for 30 days following delivery of written notice of such breach (including, but not necessarily limited to, a statement of the facts relating to the breach or default, the provisions of this Agreement that are in breach or default and the action required to cure the breach or default).

c. Survival.

Any provision of this Agreement that contemplates performance or observance subsequent to termination or expiration of this Agreement shall survive termination or expiration and continue in full force and effect for the period so contemplated including, but not limited to, provisions relating to warranties and warranty disclaimers, intellectual property ownership, payment terms, confidentiality, waiver of consequential damages, and cap on liability.

11. Miscellaneous

a. Entire Agreement.

This Agreement and any attachments hereto constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all previous agreements pertaining to such subject matter. All prior agreements, representations, warranties, statements, negotiations, understandings, and undertakings are superseded hereby and Customer represents and acknowledges that it has not relied on any representation or warranty other than those explicitly set forth in this Agreement in connection with its execution of this Agreement. Neither Party shall be bound by terms and conditions imprinted on or embedded in purchase orders, order acknowledgments, statements of work not attached hereto or other communications between the Parties subsequent to the execution of this Agreement.

b. Amendments and Waivers.

Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only by a writing signed by an authorized representative of each Party and declared to be an amendment hereto. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision. No waiver granted under this Agreement as to any one provision herein shall constitute a subsequent waiver of such provision or of any other provision herein, nor shall it constitute the waiver of any performance other than the actual performance specifically waived.

C. Governing Law; Jury Trial

This Agreement and performance hereunder will be governed by and construed in accordance with the laws of the State of California without reference to California conflicts of law principles or the United Nations Convention on Contracts for the Sale of Goods. THE PARTIES HEREBY UNCONDITIONALLY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM ARISING IN ANY WAY IN CONNECTION WITH THIS AGREEMENT.

d. No Solicitation.

During the period expiring one year after the termination of this Agreement, neither Party will, directly or indirectly, solicit or recruit any Project Participant (defined below) to terminate his or her employment with Itron. The publication of advertisements in newspapers and/or electronic media of general circulation (including advertisements posted on the Internet) shall not in any event be deemed a violation of this Section 5.c. The term "Project Participant," as used herein, means an employee or consultant of a Party that has performed work pursuant to this Agreement.

e. Assignment.

Customer may not assign or transfer its interests, rights or obligations under this Agreement by written agreement, merger, consolidation, operation of law or otherwise without the prior written consent of an authorized executive officer of Itron. Any attempt to assign this Agreement by Customer shall be null and void. For purposes of this Agreement, the acquisition of an equity interest in Customer of greater than 25 percent by any third party shall be considered an assignment.

f. Publicity.

Unless otherwise provided in a separate confidentiality agreement between the Parties, each Party may issue a press release following the execution of this Agreement, subject to the other Party's written approval, which shall not be unreasonably withheld. Each Party hereby consents to the other Party's use of its name, URL and logo on its website and in its customer and partner lists for corporate and financial presentations.

g. Force Majeure.

Neither Party will be responsible for any failure or delay in performing any obligation hereunder if such failure or delay is due to a cause beyond the Party's reasonable control, including, but not limited to acts of God, flood, fire, volcano, war, third-party suppliers, labor disputes or governmental acts. Notwithstanding the foregoing, Itron shall have no obligation to deliver Equipment or provide Services to the extent that Customer is unable to pay as a result of a force majeure event.

h. Notices.

Any notice required or permitted under this Agreement or required by law must be in writing and must be delivered in person, by facsimile, by certified mail (return receipt requested), or by a nationally recognized overnight service with all freight charges prepaid, to

the address set forth below. Notices will be deemed to have been given at the time of actual delivery, if in person, or upon receipt (as evidenced by facsimile confirmation, return receipt or overnight delivery verification). Either Party may change its address for notices by written notice to the other Party in accordance with this Section.

Itron: Attn: General Counsel
Itron, Inc.
2111 North Molter Road
Liberty Lake, WA 99019

Customer: Attn: City Manager
City of Lodi
221 West Pine Street
P. O. Box 3006
Lodi, CA 95241-1910


i. Miscellaneous.

Headings used in this Agreement are intended for convenience or reference only and will not control or affect the meaning or construction of any provision of this Agreement. If any provision in this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will in no way be affected or impaired thereby and such provision shall be interpreted so as to best accomplish the intent of the Parties within the limits of applicable law. Any principle of construction or rule of law that provides that an agreement shall be construed against the drafter of the agreement shall not apply to the terms and conditions of this Agreement. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered will be deemed an original, and all of which together shall constitute one and the same agreement. If available, maintenance and support for products will be provided pursuant to a separate maintenance agreement. Itron shall perform all work to be performed in connection with this Agreement as an independent contractor and not as the agent or employee of Customer. All persons furnished by Itron shall be for all purposes solely Itron's employees or agents and shall not be deemed to be employees of Customer for any purpose whatsoever. This Agreement is entered into only for the benefit of Customer and Itron. No other person or entity shall have the right to make any claim or assert any right hereunder, and no other person or entity shall be deemed a beneficiary of this Agreement.

[Signature Page Follows]

Agreed to and accepted:

Itron, Inc.

Signature: 

Print Name: Steven M. Helmbrecht

Title: Sr. Vice President + CFO

Date: 5/13/11

Customer: City of Lodi

Signature: _____



Print Name: _____

Title: _____

Date: _____

Tax Exempt: Yes / No (if yes, attach copy of Tax Exemption Certificate)

Approved as to form


City Attorney




Electric / Gas / Water

Information collection, analysis and application

2111 N. Molter Rd.
Liberty Lake, WA 99019
fax: 866-787-6910
www.itron.com

ATTACHMENT A

City of Lodi

May 3, 2011
Based on BMR# 9265-11 Ver2 May

Item	Part Number	Description	Qty	Unit Price	Extended Price	Notes
Software						
1	FN SW V4.x	Data Collection Network Software, Used for Water & Electric	1	\$15,000.00	\$15,000.00	(1)
	FN CCU V4.x Kit	For up to 75,000 Endpoints				
	NS1C	(Includes Billing Gateway Module)				
	OAFNC	Outage Activation		\$30,000.00	\$30,000.00	(1)
		Software Total			545,000.00	

Notes and Assumptions

- (1) Software pricing is dependent upon number of meters under the network. Monthly billing and daily read functionality are included.

2. JV# _____

TO:	Internal Services Dept. - Budget Division		
3. FROM:	Rebecca Areida-Yadav	5. DATE:	05/13/2011
4. DEPARTMENT/DIVISION:	Public Works		

	FUND #	BUS. UNIT #	ACCOUNT #	ACCOUNT TITLE	AMOUNT
A. SOURCE OF FINANCING	161		3205	Fund Balance	\$ 231,000.00
	181		3205	Fund Balance	\$ 241,000.00
B. USE OF FINANCING	161	161000	1825.1700	Fixed Network System	\$ 231,000.00
	181	181013	1825.2300	Fixed Network System	\$ 241,000.00

Please provide a description of the project, the total cost of the project, as well as justification for the requested adjustment. If you need more space, use an additional sheet and attach to this form.

Professionalservices agreement and software license agreement with Itron, Inc., purchase servers from Dell and hardware from General Pacific, Inc., for a fixed network system.

Department Head Signature: AWally Sandel

Deputy City Manager/Internal Services Manager	Date

Submit completed form to the Budget Division with any required documentation. Final approval will be provided in electronic copy format.

RESOLUTION NO. 2011-83

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING
CITY MANAGER TO EXECUTE AGREEMENTS AND
PURCHASE ORDERS FOR FIXED-NETWORK SYSTEM AND
FURTHER APPROPRIATING FUNDS

=====

WHEREAS, Resolution No. 2005-64, dated April 6, 2005, approved the standardization of solid-state electric meters for residential and small commercial customers with Itron, Inc., and Resolution No. 2010-125, dated August 4, 2010, approved the standardization of water meters transmitters with Itron, Inc. The City Council has also approved Dell Marketing, LLP, as a sole source supplier for computer hardware: and

WHEREAS, the Electric Utility and Public Works departments have initiated automatic meter reading (AMR) projects with the installation of meters equipped with encoder receiver transmitters (ERT), which are read at this time by two vehicle-mounted radio receivers and two handheld radio receivers; and

WHEREAS, staff recommends installing a fixed-network system that would read the meters via a network of receivers placed on street light poles around the community to fully receive the benefits of the AMR system; and

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute a Professional Services Agreement with Itron, Inc., of Liberty Lake, Washington, for the implementation of a fixed-network system in an amount not to exceed \$179,570; and

BE IT FURTHER RESOLVED that the City Council does hereby authorize the City Manager to execute a Software License Agreement with Itron, Inc., of Liberty Lake, Washington, for the fixed-network system data collection software and billing gateway module in the amount of \$45,000; and

BE IT FURTHER RESOLVED that the City Council does hereby authorize the City Manager to execute a Purchase Order with Dell Marketing, LLP, of Pasadena, California, for the purchase of four blade servers for the fixed-network system in an amount of \$52,272; and

BE IT FURTHER RESOLVED that the City Council does hereby authorize the City Manager to execute a Purchase Order with General Pacific, Inc., of Fairview, Oregon, for the purchase of network infrastructure hardware in the amount of \$103,041; and

BE IT FURTHER RESOLVED that the City Council does hereby authorize the City Manager to execute a Purchase Order for the purchase of radio equipment in the amount of \$30,000; and

BE IT FURTHER RESOLVED that funds in the amount of \$472,000 be appropriated from the Electric Utility Department Capital Account and the Water Capital Account for this project.

Dated: June 1, 2011

I hereby certify that Resolution No. 2011-83 was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 1, 2011, by the following vote:

AYES: COUNCIL MEMBERS - Hansen, Katzakian, Mounce, Nakanishi,
and Mayor Johnson

NOES: COUNCIL MEMBERS - None

ABSENT: COUNCIL MEMBERS - None

ABSTAIN: COUNCIL MEMBERS - None



RANDI JOHL
City Clerk